Pine Valley Meats, Inc. *and* United Food and Commercial Workers International Union, affiliated with AFL-CIO-CLC *and* Dale W. Wolfe. Cases 30-CA-5490, 30-CA-5642, 30-RC-3659, and 30-CA-5649

March 31, 1981

DECISION, ORDER, AND DIRECTION OF SECOND ELECTION

On November 12, 1980, Administrative Law Judge Michael O. Miller issued the attached Decision in this proceeding. Thereafter, the Respondent filed exceptions and a supporting brief, and the General Counsel and the Charging Party filed answering briefs.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,[1] and conclusions[2] of the Administrative Law Judge and to adopt his recommended Order.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the Respondent, Pine Valley Meats, Inc., Norwalk, Wisconsin, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, except that the attached notice is substituted for that of the Administrative Law Judge.

IT IS FURTHER ORDERED that the election held in Case 30-RC-3659 be set aside, and that said case be remanded to the Regional Director for Region 30 to conduct a second election when he deems the circumstances permit the free choice of a bargaining representative in accordance with the Board's Direction of Second Election set out below. The Notice of Election and the ballot to be used in the second election shall be written in the English and the Polish languages. The Regional Director shall include in the Notice of Election the following paragraph:[3]

NOTICE TO ALL VOTERS

The election conducted on December 21, 1979, was set aside because the National Labor Relations Board found that certain conduct of the Employer interfered with the employees' exercise of a free and reasoned choice. Therefore, a new election will be held in accordance with the terms of this Notice of Election. All eligible voters should understand that the National Labor Relations Act, as amended, gives them the right to cast their ballots as they see fit, and protects them in the exercise of this right, free from interference by any of the parties.

[Direction of Second Election and *Excelsior* footnote omitted from publication.]

[1] The Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

In adopting the Administrative Law Judge's conclusion that the Respondent violated Sec. 8(a)(3) of the Act by refusing to rehire Dale Wolfe, we accept his credibility findings as to the conversation between Wolfe and President Ramis on January 10, 1980. Further, we think the testimony of Ramis concerning a policy against rehiring former employees is unclear and fails to show that a policy existed before the refusal to rehire Wolfe. We conclude that the Respondent has not established a defense based upon such a policy.

[2] In finding that the Respondent violated Sec. 8(a)(1) of the Act by various statements of President Ramis on December 18, 1979, the Administrative Law Judge included a statement by Ramis that money which the Respondent would have to spend for attorneys' fees for contract negotiations if the Union were successful could otherwise be spent for employee benefits. The Respondent contends that the statement was improperly relied upon because it was not alleged as an unfair labor practice and was not fully litigated. We reject the contention, and see no prejudice to the Respondent in relying upon the statement. The complaint alleges that on or about December 18, 1979, Ramis promised employees additional benefits and threatened withholding the same benefits if the employees supported the Union. Ramis' speech of December 18 was clearly in issue, and he testified concerning it. Two employee witnesses who testified about the speech and attributed the statement in dispute to Ramis were cross-examined by the Respondent's attorney, and one of them was specifically questioned about the statement.

[3] See *The Lufkin Rule Company*, 147 NLRB 341 (1964).

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a hearing at which all parties were afforded the opportunity to present evidence, it has been found that we violated the National Labor Relations Act, as amended, in certain respects, and we have been ordered to post this notice and to carry out its terms.

The National Labor Relations Act gives you, as employees, certain rights, including the right:

To engage in self-organization

To form, join, or help a union

To bargain collectively through a representative of your own choosing

To act together for collective bargaining or other mutual aid or protection

To refrain from any or all of these things.

Accordingly, we give you these assurances:

WE WILL NOT threaten you with arrest for engaging in union activities on company premises during off-duty hours.

WE WILL NOT promise or grant you wage increases in order to discourage you from supporting United Food and Commercial Workers International Union, affiliated with AFL-CIO-CLC, or any other labor organization; provided, however, that nothing herein shall be taken as requiring us to cancel any wage increases or other benefits previously given.

WE WILL NOT threaten you with the loss of wage increases or other benefits in the event that you select the above-named Union, or any other labor organization, to represent you.

WE WILL NOT discharge or refuse to rehire any of you because of your union activity, membership, or support.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL offer Steven Bautch and Dale Wolfe immediate and full reinstatement to their former positions or, if that is not possible, to substantially equivalent positions, without loss of seniority or other rights or privileges, and WE WILL make them whole for any loss of earnings they may have suffered by reasons of the discrimination against them, plus interest.

PINE VALLEY MEATS, INC.

DECISION

STATEMENT OF THE CASE

MICHAEL O. MILLER, Administrative Law Judge: This matter was heard before me on May 29 and August 5, 1980, in Sparta, Wisconsin, based on unfair labor practice charges filed by United Food and Commercial Workers International Union, affiliated with AFL-CIO-CLC, herein called the Union, and Dale W. Wolfe, an individual, on November 5, 1979, February 1 and 4, 1980, and complaints issued by the Regional Director and Acting Regional Directors for Region 13 of the National Labor Relations Board, herein called the Board, on December 18, 1979, February 8 and 21, 1980. The complaints allege that Pine Valley Meats, Inc., herein called Respondent, violated Section 8(a)(1) and (3) of the National Labor Relations Act, as amended, herein called the Act. Respondent's timely filed answers deny the commission of any unfair labor practices.

Consolidated for hearing with the unfair labor practice allegations were union-filed objections to conduct affecting the results of the election, conducted in Case 30-RC-3659, which essentially track certain complaint allegations.

All parties were afforded full opportunity to appear, examine and cross-examine witnesses, and argue orally. The General Counsel, Respondent, and the Charging Party-Petitioner all filed briefs which have been carefully considered. Based on the entire record, including my observation of the witnesses and their demeanor, I make the following:

FINDINGS OF FACT

I. RESPONDENT'S BUSINESS AND THE UNION'S LABOR ORGANIZATION STATUS-PRELIMINARY CONCLUSIONS OF LAW

Respondent is a Wisconsin corporation with its principal office and place of business in Norwalk, Wisconsin, where it has been engaged, at all times material herein, in the operation of a slaughter house and beef processing plant. Jurisdiction is not in issue. The complaints allege, Respondent admits, and I find and conclude that Respondent satisfies the Board's standards for the assertion of jurisdiction over nonretail enterprises and that Respondent is an employer, engaged in commerce, within the meaning of Section 2(2), (6), and (7) of the Act.

The complaints allege, Respondent admits, and I find and conclude that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. THE UNFAIR LABOR PRACTICES

A. *Background*

Respondent started in business in July 1979 when Hyman Ramis, its president and part owner, together with others, acquired Alpine Valley Meats' plant in Norwalk, Wisconsin. Ramis, over the years, has been involved in the operation of a number of meat packing plants. Prior to his role with Respondent, he had been the corporate vice president for operations at Whitehall Packing Corporation. That company has since gone out of business as a result of a lockout of its employees during a labor dispute with the Union which is the Charging Party herein.

In staffing the new Pine Valley Meats, Respondent hired a number of experienced employees who had been working for Alpine Valley, and who had, previously, been employees of Whitehall Packing at the time of the lockout. One was Steven Bautch, alleged as a discriminatee herein. Ramis was familiar with Bautch, having personally intervened, in March 1978, to prevent Bautch's discharge from Whitehall for an incident of horseplay. He knew that Bautch was a member and openly avowed supporter of the Union at Whitehall.[1]

B. *Union Activity*

It was not long after Respondent came into operation that union activity began. About August 1979,[2] Bautch called Paul Petraneck, the Union's agent, whom he knew from his employment at Whitehall, to tell him that the

[1] The contract between the Union and Whitehall contained a union-security agreement.

[2] All dates hereinafter are 1979, unless otherwise specified.

employees were interested in unionizing. Petraneck sent Bautch union authorization cards which Bautch passed around in the Company's lunchroom and parking lot, as well as in the city of Norwalk, Wisconsin. He secured signatures on 23 such cards and returned them to Petraneck by mail on or about August 20. Those cards, however, were authorizations directed to the Amalgamated Meat Cutters & Butcher Workmen of North America, AFL-CIO, and, when that Union merged with the Retail Clerks International Association to become the United Food and Commercial Workers International Union, AFL-CIO-CLC, Petraneck sent Bautch new cards, designating that Union, for him to distribute. He passed out these cards in the same places that he had passed out the others, securing the signatures of 18 employees on various dates between approximately October 19 and 31.

On October 31, Petraneck met with Bautch, and employees Dale Wolfe and Cindy Orethun, at The Pub in Ontario, Wisconsin, and received the new authorization cards.

Ramis observed Bautch wearing a union insignia on his helmet, at both Whitehall and Pine Valley, and admitted knowledge that Bautch would be involved with or instrumental in any union activity to arise.

About 1 p.m. on November 2, 1979, the Union filed its petition for representation of Respondent's employees, Case 30-RC-3659. Following execution of a Stipulation for Certification Upon Consent Election on December 6, an election among Respondent's approximately 51 production and maintenance employees was conducted on December 21. Respondent's employees voted 24 to 14 against representation by Petitioner.[3] The Union, on December 27, filed timely objections to conduct affecting the results of the election.

C. *Events Involving and Affecting Steven Bautch*

Respondent made certain changes in its meat boning operation around October 1, installing a moving conveyor for the meat and reassigning its boners from the boning of entire quarters of beef to the boning of specific cuts. This increased production, and the increased production of beef cuts required additional cooling within the plant, particularly in the boning room. To provide this additional cooling Respondent used dry ice (solid carbon dioxide). One of the consequences of using dry ice is that, as it evaporates, it gives off carbon dioxide which, being heavier than air, displaces the air. That, in turn, sometimes creates breathing problems for people working in close proxmity to it. Such problems were present in Respondent's plant for approximately 3 weeks in October, until Respondent acquired and installed exhaust fans. There were approximately three to five incidents when the air became so bad that employees walked off the line to get some fresh air. The General Counsel contends that Bautch was a leader among the employees, voicing his concern about the dry ice problem and leading the employees out when the air became bad. Respondent admits that the dry ice caused problems in the boning room and contends that employees were permitted to leave the line whenever they felt necessary. The General Counsel's witnesses, notably Orethun and Misch, corroborate Respondent's contention that employees were free to leave when necessary. They also corroborate General Counsel's contention that, on occasion, Bautch was the first one to leave or to suggest that they leave.

On one occasion, when Bautch yelled down the boning line to find out if anyone was having trouble breathing and suggested that they go outside, he was stopped by the foreman, Jim Roback. Roback threw his own helmet on the floor and asked Bautch, "Where the f— [he] was going?" Bautch responded, "To get some f—g air." In turn Roback told Bautch not to "f——g yell" at him and that he could be fired even though the Company needed boners.[4] Roback told Bautch to wait a couple of minutes until he, Roback, called a break. Bautch and the other employees did so and shortly thereafter a break was called. This was the last incident involving the dry ice problem. Fans were installed shortly thereafter.

As previously noted, until about October 1, Respondent's boners boned entire quarters of beef; they did not, it appears, specialize in particular cuts of meat. However, when the moving boning table was installed, each cut of meat was assigned to a station at the table and the boners, with some variation, specialized in particular cuts. Bautch, an experienced boner, primarily boned the cut known as the navel. However, the production records from October 1 until his discharge show that he also boned some rounds and ribs. Navels, it was testified, is the least difficult boning job, the one on which new boners are started and trained because miscuts do not reduce the value of the meat. It was, however, the job which Bautch could perform best because an earlier work-related injury had caused a weakness in one hand, making the boning of other cuts more difficult. Navels were boned at the third station at the table.[5]

Beginning sometime in October, Respondent's boners worked on an incentive system. That system had been set up by Ramis following consultation with Bautch and other boners. While Bautch and Ramis were discussing the incentive rates, Plueger, one of Ramis' partners, walked by. Ramis told Plueger "Be careful, we got a union meeting going here."

On October 31, Bautch worked on navels until about 10 a.m. At that time, Buchholz, boning room foreman, told Bautch that he would be boning loins and that employee Donnie Peterson who had been boning loins would bone navels and would train some of the foreign speaking, inexperienced boners to work on navels with

[3] Two void ballots and six challenged ballots were not sufficient to affect the results of the election.

[4] The frequency with which Respondent's employees and supervisors used the four-letter expletive crudely describing sexual congress is, as will be seen *infra*, of particular significance in this case.

[5] Bautch's testimony, that the boning of navels was his principal assignment since shortly after he started working for Respondent, appears to be in conflict with the testimony of boning Foreman Buchholz and boner Helgeson. They both testified that boners worked on entire quarters of beef until the individual boning stations were established in October. To the extent that there is conflict, I choose to accept the testimony of Buchholz as corroborated by Helgeson.

him. Bautch insisted that he had done some training, but Buchholz said that that made no difference, that Bautch would bone loins and that Peterson would work on the navels. Bautch also protested that the reassignment would cost him incentive earnings. According to Buchholz, Bautch was told that the moves were being made to increase production and would not be permanent. Bautch recalled Buchholz telling him that there was no reason why he had been assigned to loins while Peterson was given the navels.[6] In the course of their arguments over this reassignment, according to Bautch's uncontradicted testimony, Buchholz told him, "If I could do any better, why didn't I take his place." Bautch told Buchholz that he did not want Buchholz' job.

Bautch boned loins until Friday morning, November 2. At or about 11 a.m. on that day, Buchholz switched Bautch back to the boning of navels and asked if that made him happier. Bautch said that it did and asked whether he could stay on that cut. Buchholz expressed doubt that such an assignment would be possible. According to Bautch, the assignment to loins reduced his earnings for the week.

On what appears to be Wednesday, October 31, the same day that Bautch was having his dispute over job assignments with Buchholz, Ramis passed Bautch in the boning room. As they passed, Ramis asked, "How are you doing?" Bautch replied, "Not worth a f—." Ramis kept on walking and said nothing.[7]

Boners use various implements to keep their knives sharp. They are provided with sharpening stones and steel; some go the additional step of personally acquiring a ceramic, an implement used to put the finishing touches on the knife's edge. Not all of Respondent's boners have ceramics; it was testified, without contradiction, that boners who did not have a ceramic frequently borrowed one from other boners on the line.

At or about 2 p.m. on Friday, November 2, 1979, Bautch testified, he was having trouble keeping his knife sharp; his own ceramic did not seem to be doing the job. He walked about 20 feet down the line, as he had done before, to borrow Freddie Misch's. While he was sharpening his knife and simultaneously exchanging a few words with Misch, Jim Roback, the other boning supervisor, yelled over to him that he was not where he belonged. Bautch told Roback that he was using Misch's ceramic and Roback told him that he should buy one of his own. Bautch said that he could not afford one, put Misch's back, and returned to his work station. No further action was taken against Bautch in regard to this incident. The record indicates that no other employees had ever been precluded from borrowing the tools of another employee or been yelled at when they did so.

Just before quitting time on Friday, November 2, 1979, Buchholz took Bautch from his work station and sent him to the office. Present in the office were Ramis, Plueger, Roback, and Buchholz. According to Bautch's testimony,[8] Ramis referred to the incident of Wednesday afternoon, wherein Bautch had responded to his rhetorical question "How is it going" with a blunt "Not worth a f—." Ramis went on to refer to reports from a "substantial" number of people that Bautch had been "bad mouthing" the Company around town. Bautch responded that he had only been voicing his opinions about the incentives and overall conditions and denied "bad mouthing" the Company. Ramis brought up an incident in which he claimed that some of Bautch's checks had "bounced" and said that Bautch had blamed Respondent. Additionally, he told Bautch that Bautch had been offered a foreman job and refused it and had complained that he did not get paid enough. Bautch pointed out that the only offer of a foreman's job made to him was Buchholz' statement to the effect that if Bautch felt that he could do a better job than Buchholz he should take Buchholz' place, and the only statement he had made about not being paid enough related to his inability to afford a new ceramic, which had been said earlier that day. He explained his problem with the bank and told Ramis that Ramis had not heard the good things he had said about the Company. Ramis told him that they were "just going to have to let him go," and refused Bautch's request for a written statement of the reasons for his discharge. Ramis repeated that he was being terminated because Bautch "didn't like it there and . . . was bad mouthing the company," told Bautch that he "was a nice guy and [that he] didn't have anything to complain about [Bautch's] work and that [Ramis] thought [Bautch would] be the last person in the plant to be saying things like this. . . ." Bautch was given his check and left.

Ramis testified that he discharged Bautch for a number of reasons. He said that Bautch would not respond to the foremen's instructions regarding boning and that he had observed cuts where Bautch had failed to get all the meat off the bones. In the same vein, he accused Bautch of a lack of cooperation and interest and of giving back talk when foremen gave him instructions. Beyond his own brief testimony that he observed bones not adequately cleaned of the meat, no evidence was introduced to support these reasons. Further, Ramis testified that he had received "in town and from various people . . . all sorts of feedback about Steve Bautch knocking Pine Valley Meats, not a good place to work, everything is bad, and a special reference to a minority group which I'm a part of. Nothing worse than working for a dirty Jew." In explanation, Ramis said that Bautch was "telling people that its not a very nice place to work and, again, the ethnic deal primarily." Of the ethnic slur, Ramis further said that the biggest problem Bautch "had was with me. It was again because of the fact of what I am." Ramis pointed out that Bautch had "knocked" him to his partner, Lehman, telling Lehman at the time that Ramis was looking to buy into the business that Lehman

[6] The statements are not necessarily inconsistent; it is entirely possible that both statements were made during arguments over the course of the next 2 days.

[7] Ramis could not recall whether this occurred on Tuesday, Wednesday, or Thursday of that week, but testified that it was a few days prior to his discharge of Bautch. That discharge took place on Friday, November 2.

[8] To the extent that Bautch relates more detail of their conversation than does Ramis, I credit Bautch. In addition to my consideration of their comparative demeanors, I note that neither Buchholz, who testified in regard to other matters, nor Plueger was called on to corroborate Ramis' recollections.

should not have anything to do with Ramis because of what Ramis was. This ethnic slur, which Bautch essentially admitted, was made prior to Ramis' purchase of Respondent; it preceded Bautch's hiring-in at Respondent and was not the subject of any action taken by Ramis when he first learned of it. The record contains no evidence that Bautch ever repeated it to anyone else.

Ramis was reluctant to name the individuals who allegedly informed him of Bautch's "bad mouthing" of the Company. Ramis admitted that reports of such conduct came to him in about August. When pressed, on cross-examination during the resumption of the hearing herein, Ramis testified that the "bad mouthing" incident occurred in July or August, and had taken place in a tavern. The only persons he could identify in any way as having told him of any such incidents were Supervisor Tim Honen and an exemployee, whose name he did not recall. His recollection was that Honen had told him, sometime around July or August, that Bautch had made a statement in a saloon on a Friday night to the effect that Respondent's plant was a lousy place to work and that he may have said something about selling bad meat. When asked, during that cross-examination, whether the remark by Bautch to Lehman concerning Ramis' ethnic heritage entered into his decision to discharge Bautch, Ramis said that it did not, that "That was months and months ago, before [the decision to fire Bautch]." He refused to name anyone else who told him about Bautch making anti-Semitic remarks.

Finally, Ramis testified that the straw that broke the camel's back was Bautch's response to him on the Wednesday preceding his discharge, when Bautch answered Ramis' salutation with "Not worth a f—." Various witnesses testified that the use of the work "f—" was common in the plant; employees used it among themselves and to supervisors, and supervisors used it as well. Even Ramis acknowledged that it was a common expression in the plant. However, he said that he never used it to employees and would not tolerate employees using it in speaking to him. One employee, Gunderson, testified that he used the word once, at a time when he was irritated at the difficult job he was working on, and then realized that Ramis was standing behind him. He said that his knowledge that Ramis had heard him was not "a good feeling" because he knew that that was "not the kind of language to use in front of him." Similarly employee Abrahamson testified that while the word was in common usage in the plant by both employees and foremen, was used by foremen in giving instructions to employees, and was even used in front of young female employees, he had not, to his knowledge, heard anyone use it in conversation with Ramis. In regard to that, he testified that the employees were, "Not too smart down there, but no ignorance there." The record contains no evidence of Ramis using the word "f—." Neither does it contain evidence of any employee being disciplined for use of bad language. It does indicate, however, that Ramis was not averse to characterizing Whitehall's earlier discharge of Bautch for tapping someone on the head with a bone as "chickenshit" and the unfair labor practice charges as having the National Labor Relations Board "on his ass."

D. *Alleged 8(a)(1) Violations and Evidence Regarding Animus*

In early November 1979, after having attended the October 31 meeting at The Pub in Ontario, employee Dale Wolfe made two trips into the plant after working hours in order to give a Tracie Markee some authorization cards. As Wolfe recalled it, on one evening, about 8 p.m., he went to the plant and asked the foreman, Honen, if Tracie was there. She was not and Wolfe left. He returned on the following night, and again asked Honen whether he could talk to her. Honen permitted him to do so, Wolfe went into where Tracie was working, gave her a union authorization card for herself and another for a friend, and asked her to sign the card.[9]

Tracie Markee told Honen of Wolfe's visit and showed him the union authorization card which she had received. Honen, she said, told her that she was supposed to keep the doors locked and asked how Wolfe got in. She told him that she had left the doors unlocked.

On the following morning, Ramis spoke to Wolfe at his work station. As Wolfe recalled the conversation, Ramis told him, "If I was caught at night around the plant again, he was going to call the sheriff."[10]

There was no published or announced plant rule prohibiting off-duty employees from entering the plant. Neither is there any evidence that other employees either attempted to do so or were precluded from or disciplined for doing so.

Sometime within the same week as the forgoing incident, Tracie Markee spoke with Ramis. She asked Ramis what a union was or does and whether it would hurt the plant, the employees, or him if a union came in. Ramis, she said, told her that unions give employees certain benefits, like equal pay and vacations and would not hurt him or the plant. He pointed out to her that it was a small company. She asked him whether it would be a good idea to vote for a union and he said, "It was up to

[9] Tracie Markee's recollection is slightly different. She recalled Wolfe coming into the plant on 2 successive evenings, giving her a card for herself on the first visit and one for her sister on the second. She claims to have told him that no one was supposed to be in the plant (other than the cleanup crew) after hours and to leave. He left when so instructed. Honen did not testify.

[10] Ramis testified, on the first day of the hearing, that Tracie Markee had told him, after Wolfe's second visit to the plant, that Wolfe had come into the plant after hours and sought to talk to her about signing up for the Union. When the hearing resumed, Ramis could not recall whether it was Tracie Markee or Honen who told him about Wolfe's visits to the plant. After the second such incident, Ramis said he spoke to Wolfe, telling him that he could pass out union cards during the working day on his lunch hour, coffeebreak, or after work, but that he could not come back into the plant after the shift had ended, for security reasons. He claimed that he also told Wolfe that he was going to have the sheriff make passes through the parking lot so that no outsiders could come in. I was more favorably impressed with the demeanor and candor of Wolfe than I was with that of Ramis. I further deem Ramis' explanation of his statement concerning the sheriff to be illogical and implausible in the circumstances described herein. There was no evidence of outsiders seeking to enter the plant such as might give rise to such a statement. Accordingly, I credit the testimony as related by Wolfe. I note, however, that while Wolfe's version of his conversation with Ramis made no mention of union cards, Ramis' version of that same conversation did contain such references. At the very least, this indicates an awareness by Ramis, at the time he spoke to Wolfe, that Wolfe was in the plant for the purpose of passing union authorization cards.

[you], kid. . . ." She did not recall whether she told Ramis about Wolfe's visits to the plant or mention the union authorization card she had received.

Donald Abrahamson and Carl Gunderson, both experienced employees on Respondent's kill floor, commuted 60 or more miles each way from their homes to the plant together with kill floor Foreman James Jahr. During their long commutes, it was not uncommon for them to discuss wages and other conditions of their employment. In one such discussion, occurring in late November, they told Jahr that unless they got more money, they were going to look for work closer to home. Jahr promised to talk to Ramis about their problem. After work, Ramis met with Gunderson, Abrahamson, and Jahr in Abrahamson's car. According to Abrahamson's recollection, Ramis opened the conversation by saying that he could not talk about the Union and that his "hands are tied." He said that both the Labor Relations Board and his attorney had advised him not to discuss the Union. They told Ramis that they needed more money to exist and Ramis told them that he could not give them a raise at that time because it would look like a bribe in regard to the union campaign. He acknowledged that they needed more money and complained that he did not know how to meet their request. He also acknowledged that, if they quit, his production on the kill floor would be jeopardized. Ramis then suggested that while he could not increase their hourly rate, he could add 2 to 3 hours per week to their paychecks to compensate them. He asked them not to tell anyone about the additional pay and they complied. About 2 weeks later, both Abrahamson and Gunderson noted additional hours' earnings added into their pay. Abrahamson testified that he was not performing any extra work for that compensation. Gunderson testified that he performed some work before and after the shift while not on the clock.

In January 1980, Ramis called Abrahamson, Gunderson, and Jahr into his office. He told them that they had a problem and that the Labor Board was "on [his] ass." Telling them that they did not have to speak with him and were free to go, and that their jobs were not in jeopardy, he asked them whether they felt that they had been threatened or bribed. Abrahamson said no. They were asked to sign a statement to that effect; however, after Abrahamson indicated that he would look at such a statement if it were prepared, he never received or was shown one. In the course of this conversation, Abrahamson recalled, Ramis told him that he was only trying to create jobs and treat people fairly and that, "There are some spies in the organization."[11]

In the week following Bautch's discharge, employees Ken Kumferman and Richard Erickson discussed Whitehall Packing and the Union with Ramis. Ramis told them that he was definitely against having a union and "could probably work out things without having a union in there." He also told them that they were going to have a meeting to discuss raises and benefits.[12]

About December 18, 3 days before the NLRB election, Ramis gave a speech to his employees. Ramis claimed that he read, without deviation or addition, the following:

> I have been informed by the National Labor Relations Board that the election to vote whether you want a union to talk for you with me or not will be held between 2:30 pm and 4:00 pm on Friday, Dec. 21, 1979 here at the plant.
>
> I will be talking with you more about this important decision in the next few days, but for now I want to give you just a few facts.
>
> When we started this operation four months ago we decided that we would see how things went for the first six months and then if we were doing ok we could then give everybody the kinds of fringe benefits that we would like to see everybody have *but* we also decided that we want you to decide what you want—a raise, paid holidays, insurance or whatever. There is only so much we can afford to give but it doesn't matter to us how you spend your money.
>
> But if the union wins the election on Dec. 21st we can't go ahead with these plans. Under the law, the union then becomes the only spokesman for all of you even if you personally didn't vote for it. This means that it is illegal for the company to make any changes in pay or benefits unless it is negotiated as part of a contract with the union. Since there are always legal questions involved in these things, it could take months or even longer for us to even begin talking with the union about a contract.
>
> I don't want that to happen. I want to be able to talk to you directly like I am today. We want you to have the fringe benefits that the majority of you decide on. We don't want somebody from the outside coming between us—especially somebody that only wants to get your money as dues even before you get your paycheck.
>
> All we want is a chance to show you that we can all grow here together—without the risks that a union will bring. I personally think that the people that started this thing are no longer ever [sic] working here—but you are just getting stuck with what they started.
>
> I would personally appreciate your full support in this—I don't think that a union will ever be necessary here, especially if we give each other a chance.
>
> I will be talking with you more on an individual basis over the next few days, but don't hesitate to come in and ask me any questions you might have.
>
> THANKS FOR YOUR SUPPORT!!

Ramis admitted that he also made references to a leaflet put out by the Union referring to the Union at certain large meat packing plants. Ramis' remarks were translated, line for line, into Polish for those employees who spoke no English.

Notwithstanding Ramis' contention that he adhered strictly to the written words before him, employees recalled him varying from or adding to that speech. Thus,

[11] The foregoing testimony is uncontradicted.

[12] This testimony is uncontradicted.

Abrahamson credibly recalled that Ramis was upset at the time he gave his speech and that he told the employees," . . . the money he would have to spend for attorney fees to negotiate a contract with the union could be spent on the employees for more wages or better wages, insurance, sick pay, and so forth, fringe benefits." Abrahamson's recollection is corroborated by that of Freddie Misch.

At the conclusion of Ramis' speech, two employees, Tom Lindow and Amy Markee, asked Ramis if they could circulate an antiunion petition. Ramis told them that he could not tell them what to do, that he could not give them advice, or help them.[13]

Lindow and Markee got paper and pen from the office and wrote out a petition stating: "We the undersign [sic] do not want a union at Pine Valley Meats." Each of them then signed it and they proceeded to carry it around the plant, soliciting employees' signatures. Their solicitation was engaged in during working time and in working areas of the plant and was observed by supervision, including Ramis, who asked Roback what they were doing. Roback told him that they had passed the antiunion petition. Lindow and Markee secured 49 signatures on that petition.

After they had circulated the petition, Respondent's secretary asked if she could have a copy so that Respondent could thank the people who signed it. Markee gave her one on the following day and, with the approval of Ramis, it was posted on the bulletin board with this note, signed by Ron Plueger:

> On behalf of Hy Ramis, Mary Lehman, and myself, I'd like to thank you for your support you showed in signing the attached petition. We would greatly appreciate the same type of support tomorrow when you vote.

As previously noted, the election was held on December 21 and the Union lost.

Under examination by the General Counsel, Ramis initially denied that he opposed the Union's organizing efforts, stating that he knew the business agent, Petraneck, and that, "If that's what the employees wanted, it's fine with me." He subsequently acknowledged that he would rather operate his plant without a union and that he felt that this union, which included grocery clerks, was an inappropriate representative for his employees. He acknowledged further that this union's predecessor, Local 73 of the Meatcutters Union, had consumed a good deal of his time with grievances when he was in charge of operations at Whitehall. He noted that he dealt with unions at other plants in which he had worked in both Chicago, Illinois, and Eau Claire, Wisconsin; the unions there were affiliated with another International. Respondent, in its brief, does not deny that Ramis was opposed to the selection of the Union as the collective-bargaining representative of his employees. Respondent's counsel states: "That point is not disputed by Respondent. It is virtually inevitable that an employer with a non-union business will prefer to remain non-union in the face of an organizing drive."

E. *The Refusal To Rehire Dale Wolfe*

Dale Wolfe was a boner-trainee. He began working for Pine Valley in August, at the minimum wage, and worked until the first week in December, when his earnings were $5 per hour. He then asked for another increase, to the rate being paid the experienced boners. Roback refused his request, stating that when Wolfe was able to make the production rate while "picking his own bones" (removing the bones from the meat) he would be given a raise. Not getting the raise he sought, and believing that he could get another job elsewhere, Wolfe quit.[14]

Wolfe came immediately to regret his decision and called Ramis, seeking reemployment. On January 10, 1980, Wolfe came to the plant. Ramis then took him to breakfast and Wolfe repeated his request for reemployment. According to Wolfe's recollection, Ramis told Wolfe that he did not think that he could do anything for Wolfe, "because it would interfere with the case that the Union was bringing against him over Steve Bautch being fired . . . ." Wolfe also recalled Ramis telling him how a union coming into a plant such as his could break the plant and be hard on the plant . . . ." Wolfe disclaimed any further interest in the Union, but Ramis continued to maintain that he could not help Wolfe. On cross-examination, Wolfe further recalled that Ramis had said that he could not rehire Wolfe because Wolfe was tied in with Steve (Bautch) and Cindy (Orethun) "on the case."[15]

Ramis denied telling Wolfe that he would not rehire Wolfe because of his association with the other union activists or because of the effect of such a hire on the pending unfair labor practice charges. He claimed that he told Wolfe that he could not rehire him because of his policy not to rehire employees who quit or were terminated. Further, he claims that he told Wolfe that Wolfe had not been a very good employee. The policy to which Ramis alluded, it appears, originated with the efforts of Wolfe to return to work. Ramis testified that he had rehired people prior to this and it had not worked out, that most frequently they quit again. Therefore, he testified, "We decided at that time that we might as well start with something. We will start with the policy of not rehiring." Similarly, his contention that Wolfe was a poor employee is not borne out by the record. No testimony from any of Wolfe's supervisors was offered on

[13] Misch recalled Ramis replying to their query as to whether or not it was legal for them to petition against the Union by saying "I don't know, but God bless you . . . for the thought of it." Neither Ramis nor any of the other employees who testified recalled that Ramis gave his "blessing" to the efforts to circulate an antiunion petition. Absent such corroboration, I cannot conclude that such a "blessing" was part of Ramis' response.

[14] Cindy Orethun, the third employee participant in the October 31 union meeting, also quit about December 5.

[15] Wolfe had not recalled the latter statement during his direct examination, notwithstanding that the General Counsel had shown him his pretrial affidavit for the purpose of refreshing recollection. These statements, I conclude, are not materially inconsistent with each other or with the version of this conversation related in Wolfe's pretrial affidavit; i.e., "Hy said he knew I was tied up with the Union as much as they [Bautch and Orethun] had been and if he hired me, he would be afraid I would sue him too."

this issue. However, in its brief Respondent contended that Wolfe's lack of skill was evidenced by the record establishing that he seldom made the incentive rate. This argument ignores the fact that Wolfe was still a trainee and was being paid a lower rate than the experienced boners. Moreover, the fact that Wolfe's rate of pay increased from $2.90 per hour to $5 in 4 months indicates that he was progressing at least satisfactorily in the acquisition of necessary skills.

Notwithstanding Wolfe's inability to recall every detail of the January 10 conversation, I was more favorably impressed with his testimonial demeanor than that of Ramis. Considering that demeanor and noting what appears to be Ramis' recent invention of the rule precluding the rehire of voluntarily terminated employees, I conclude that Wolfe's recollection of the January 10 conversation is more accurate than that of Ramis.

Following Wolfe's conversation with Ramis, he spoke with Foreman Jim Roback. In response to Wolfe's question, Roback told him that the Company needed boners, that they always needed boners.

F. *Analysis and Conclusions*

1. 8(a)(1) violations

The General Counsel contended, and I agree, that Ramis' threat to call the sheriff if Wolfe were caught around the plant again, which followed Wolfe's attempt to distribute authorization cards in the plant after his workday had finished, interfered with Wolfe's right to engage in such activity, in violation of Section 8(a)(1) of the Act. Ramis knew why Wolfe came back to the plant; Honen, and possibly Markee, told him. If Ramis' purpose in talking to Wolfe had merely been to prevent off-duty employees from entering the plant after the regular production hours were completed, a simple instruction to that effect would have sufficed. The reference to the sheriff was entirely superfluous and could only have been intended to add an element of coercion. Moreover, Respondent had no rule prohibiting off-duty employees from entering the plant. Thus, Respondent's reliance on *GTE Lenkurt, Inc.*, 204 NLRB 921 (1973), for the proposition that a nondiscriminatorily enforced rule barring off-shift access to the premises for any purpose is presumptively valid, is misplaced. As the Board has stated several times since issuance of the *GTE Lenkurt* decision: "The holding of *GTE Lenkurt*, . . . must be narrowly construed to prevent undue interference with the rights of employees freely to communicate their interest to those who work at different times." Therefore, such rules will be deemed valid only if, among other things, they are clearly disseminated to all employees. See, for example, *Continental Bus System, Inc.*, 229 NLRB 1262 (1977). It is further illustrative of the coercive nature of Respondent's conduct herein that, when on-duty employees sought to petition other working employees against the Union, Respondent did not interfere. Respondent's tolerance for such activities, which tended to interfere with production and which, in the context of a slaughter house and meat processing plant possibly presented some dangers to the employees, stands in marked contrast to its prohibition of Wolfe's after hours activity.

The foregoing, however, does not require that Respondent's tolerance of the antiunion petition activities must similarily be found to violate the Act. It does not necessarily follow from the unlawful prohibition of one kind of prounion activity that the permitting of related activity for the opposite purpose is also unlawful. Further, I can not find in Ramis' December 18 statements evidence that Respondent encouraged or supported circulation of that petition. Neither can I find that Respondent's satisfaction that employees would take such a course of action, or its thanking of employees for their expressions of support, violated Section 8(a)(1) of the Act. Accordingly, I shall recommend that the complaint, insofar as it alleges that Respondent unlawfully encouraged, supported, and permitted the December 18 petition to be circulated, be dismissed.

It is undisputed that Respondent met Gunderson's and Abrahamson's requests for additional pay during the period between the filing of the petition and the election, and that, in so doing, Ramis told them that he could not discuss the Union or appear to be bribing them with respect to it. As the Board has stated many times, "The mere grant of benefits during the pendency of an election petition raises a presumption of impropriety unless satisfactorily explained by the employer." *Rupp Industries, Inc.*, 217 NLRB 385 (1975). See also *Ashley Warp Knitting, Inc. d/b/a Jefferson Apparel Company*, 248 NLRB 555 (1980). Therefore, the question is whether Respondent's evidence overcomes this presumption. In the instant case, Respondent does not seek to rely on any history of wage increases or benefit grants. No such history exists. Rather, it relies on the fact that the employees had requested the increases and, indeed, that these valuable employees had threatened to quit unless they received more money. Additional reliance is placed on Ramis' specific disclaimer of any intention to bribe the employees, and his request that they not tell other employees about the increases. These latter factors, however, cut both ways. It can be argued as persuasively that Ramis' references to the union and to bribes alerted those employees to the real and unlawful reason for their additional earnings as it can be argued that such statements constituted effective disclaimers. On balance, I am constrained to conclude that Respondent has failed to adequately rebut the presumption of illegality as to these wage increases. In so concluding, I note that Respondent did not seek to determine from the employees how serious they were about securing other employment or how imminent might have been their departures. I note further that Respondent need not have mentioned the Union at all if its purpose was only to retain these two employees. Finally, I note that the additional benefits appeared on their paychecks in the week almost immediately preceding the election.[16] As has been noted by at least one court: "Ordinarily, the more imminent a representational election, the greater the presumption that management's expression of con-

[16] The record does not support Respondent's contention, in brief, that the additional earnings appeared on the employees' checks after the election of December 21. The employees' conversation with Ramis took place in the week following Thanksgiving and the additional earnings appeared on their checks about 2 weeks later.

cern for employee welfare has an impermissible motive." *N.L.R.B.* v. *Rich's of Plymouth, Inc.*, 578 F.2d 880, 883 (1st Cir. 1978). Finally, in this regard, I must reject Respondent's contention that, because Gunderson and Abrahamson testified that they did not consider the additional earnings to be a bribe and were not influenced by it, Respondent's conduct was not a violation of the Act. "[I]t is axiomatic by now that a finding of restraint or coercion depends not on the subjective impressions of employees, but on the objective standard as to whether such conduct reasonably 'tends to interfere with the free exercise of employee rights." *Helena Laboratories Corporation*, 228 NLRB 294 (1977). Such grants of benefit as were here given have the reasonable tendency so to interfere.

Similarly, I must conclude that, by his speech of December 18, Ramis both promised employees that increased benefits would soon be granted if they rejected the Union and threatened that if the Union prevailed in the election no new benefits would be granted for "months or ever longer . . ." Respondent contends that Ramis was merely "reminding" employees of management's plans and urging them to be patient. The record, however, is barren of any evidence to establish that Respondent had formulated any plans, prior to the advent of the union, to increase wages and/or fringe benefits. One can not "remind" an employee of something about which that employee knows nothing. Moreover, I find that Respondent emphasized the threatening nature of his statement by referring in the speech to "the risks that a union will bring." Additionally, I have credited the testimony of Abrahamson and Misch to the effect that Ramis told the employees that money which a union victory would require Respondent to spend on attorney's fees for contract negotiations would otherwise be theirs if the Union were not selected. Such statements contain both the promise of increased benefits and threat that those benefits would be withheld, depending on how the employees voted. Accordingly, I find that, by such statements, Respondent has violated Section 8(a)(1) of the Act.

2. Discrimination against Steven Bautch

In concluding, in agreement with the General Counsel, that Steven Bautch was discharged for his union activities, I note that all of the factors traditionally deemed by the Board to support such a conclusion are present here. There was union activity; Respondent knew of that union activity and knew or had reason to believe that Bautch was heavily involved in it; and there was opposition to that activity which manifested itself in both lawful and unlawful actions throughout the campaign. Moreover, I note that the discharge of Bautch occurred at the height of his union activity; he had been engaged in active card solicitation during the preceding week and had attended a meeting with union representatives only 2 nights earlier. These factors all support the General Counsel's *prima facie* case of discrimination. See *Jeffrey P. Jenks d/b/a Jenks Cartage Company*, 219 NLRB 368 (1975).

Respondent contends, however, that Bautch was discharged, not for his involvement in union activity, but rather for series of events including ethnic slurs, "bad mouthing" of the Company, and finally the utterance of a sexual epithet in the presence of Respondent's president. Respondent's reactions to those events as they occurred belie its contention and establish that the asserted reasons were mere pretext to cloak an otherwise unlawful discharge. Thus, the ethnic slur, as unwarranted and reprehensible as it was, was allowed to pass without comment or effect. It was uttered prior to Ramis' aquisition of the business; Ramis not only failed to call Bautch on it but approved his hiring after it had occurred. Moreover, as to the effect of the ethnic slur on Ramis' ultimate determination to discharge Bautch, Ramis testified inconsistently. At one point, early in his testimony, he indicated that this was a seriously considered factor. Subsequently, after he apparently realized how weak such a position would be in view of the lack of earlier reaction, he testified that it was not a contributing factor.

Similarly, although Ramis told Bautch that he had reports of "bad mouthing" from 14 or 15 people, and inferred in his testimony that he had numerous such reports, Ramis could testify as to only one or two, which had occurred many months prior to the discharge and were relatively innocuous. Again, there is no evidence that Ramis reacted to those reports at any time or in any way prior to the ultimate discharge.

Finally, there is the "not worth a f—" incident. Respondent would have us believe that the use of this expression so offended him that it necessitated Bautch's discharge. Yet, Ramis was an "earthy" individual in an earthy business, not above using such words as "chickenshit" or "ass" himself. The use of such language was common in the plant and he had heard it before. And, when this statement was made, he reacted not at all. Even assuming that Ramis considered discharge so serious that he would want to mull it over for sometime prior to taking such a drastic step, it is highly unlikely that he would not have immediately said something to Bautch to indicate his disapproval, if in fact it bothered him. Moreover, I find it incredible that an individual with obvious pride in his heritage would tolerate an employee's slander against that heritage and yet not tolerate the essentially casual use of a common epithet.

Accordingly, I must conclude that the reasons which Respondent stated as causing Bautch's discharge were pretextual, not actual. The falsity of those reasons further supports the inference that the discharge was motivated by a prohibited reason. See *Kranco, Inc.*, 228 NLRB 319 (1977), and *Paramount Metal & Finishing Co., Inc. and Paramount Plating Co. Inc.*, 225 NLRB 464 (1976). I so find.[17]

However, I cannot conclude, as alleged by the General Counsel, that Bautch's assignment to the cutting of loins or Roback's direction to him to return to his work station when he sought to use Misch's ceramic was moti-

[17] Additionally supporting this conclusion of discriminatory motivation is Ramis' obvious reference to Bautch (and Wolf and Orethun as well) in his speech of December 18, wherein he noted that the people most responsible for the union campaign were no longer even employed by Respondent. Such a statement evidences knowledge, animus, and motivation. See *Florida Medical Center, Inc. d/b/a Lauderdale Lakes General Hospital*, 227 NLRB 1412, 1423 (1977).

vated by his union activity or by any protected concerted activity involved in leading walkouts when the dry ice problem got too severe. The necessary nexus between those actions and the protected concerted activity simply does not exist. Bautch had boned other cuts of meat while employed by Pine Valley, his alleged specialization on navels had only been since the beginning of that month, he was an experienced boner who could be expected to bone other cuts, and the assignment of someone else to train new boners on the cuts that Bautch had been doing was not so irrational as to warrant a conclusion of unlawful motivation. The incident involving the ceramic appears similarly unrelated to any union activity. It might be argued that Roback, by ordering Bautch back to his work station, was seeking to isolate Bautch from other employees and prevent him from engaging in union activities, but such would only be a surmise. The record does not warrant such a conclusion.

Accordingly, to the extent that the complaint alleges discrimination against Bautch by reassigning him to other and more onerous work or by denying him the opportunity to use someone else's sharpening tools, I shall recommend that it be dismissed.

3. Discrimination against Dale Wolfe

Respondent readily concedes that Section 8(a)(3) of the Act is violated when an employer refuses to hire an applicant for employment because of his or her union affiliation. See *Phelps Dodge Corporation* v. *N.L.R.B.*, 313 U.S. 177 (1941); *Winn-Dixie Texas, Inc., d/b/a Foodway*, 235 NLRB 415 (1978). The issue in this case is whether Respondent was so motivated in its refusal to rehire Dale Wolfe or was motivated by other, nonunion considerations. I have credited Wolfe's version of the interview wherein Ramis refused to hire him and discredited Ramis' assertion that the existence of a rule against rehiring former employees precluded Wolfe's rehire. I have similarly found Ramis' contention that he refused to rehire Wolfe because Wolfe was not a very good boner to be unsupported by the record and pretextual. I therefore conclude that, as evidenced by Ramis' statements to Wolfe, the refusal to rehire Wolfe was in fact motivated by Wolfe's affiliation with the Union and his association with other union supporters. This conclusion, I believe, is further buttressed by the fact that Ramis, in his speech of December 18, delivered at a time subsequent to Wolfe's quit, referred to the "people that started this thing," who were no longer working for Respondent, an obvious reference to Bautch, Wolfe, and Orethun.

Accordingly, I find that by refusing to rehire Dale Wolfe because of his union affiliation and activities, Respondent has violated Section 8(a)(1) and (3) of the Act.

III. CONDUCT AFFECTING RESULTS OF ELECTION

I have found that Respondent violated Section 8(a)(1) and (3) of the Act by certain conduct occurring after the filing of the petition and prior to the election. I further find that such conduct also interfered with the exercise of a free and untrammeled choice in the election held in Case 30-RC-3659, on December 21, 1979. Accordingly, I recommend that that election be set aside and a rerun election be conducted. In agreement with the request of the General Counsel, I further recommend that the notice of second election be in both English and Polish, as the record reveals that there are a substantial number of Polish-speaking employees, and that the notice of rerun election contain an introductory paragraph explaining the circumstances of the second election, as provided in *The Lufkin Rule Company*, 147 NLRB 341 (1964).

IV. THE REMEDY

It having been found that Respondent has engaged in unfair labor practices in violation of Section 8(a)(1) and (3) of the Act, it will be recommended that Respondent cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

It having been found that Respondent discriminatorily discharged Steven Bautch and discriminatorily refused to rehire Dale Wolfe, Respondent shall offer them immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority or other rights and privileges, and shall make them whole for any loss of pay they may have suffered as a result of the discrimination against them.[18] Any backpay due shall be computed in accordance with the formula set forth in *F. W. Woolworth Company*, 90 NLRB 289 (1950), and *Florida Steel Corporation*, 231 NLRB 651 (1977).[19]

CONCLUSIONS OF LAW

1. By threatening employees with arrest for engaging in union activities in the plant on off-duty hours, by promising and granting wage increases and other benefits in order to discourage employees from supporting the Union, and by threatening employees with the loss of wage increases or other benefits in the event that they select the Union as their collective-bargaining representative, Respondent has violated Section 8(a)(1) of the Act.

2. By discharging Steven Bautch and refusing to rehire Dale Wolfe because of their union activity, membership, or support, Respondent has discriminated in regard to the hire and tenure of their employment, in violation of Section 8(a)(3) and (1) of the Act.

3. The unfair labor practices enumerated above are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

4. The unfair labor practices enumerated above have interfered with the employees' rights to a free and untrammeled choice in the election conducted in Case 30-RC-3659 on December 21, 1979, and have tainted the results of that election.

5. Respondent has not engaged in any unfair labor practices not specifically found herein.

Upon the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, I hereby make the following recommended:

[18] The record reveals that Respondent terminated its boning operation sometime subsequent to the refusal to rehire Dale Wolfe. It is appropriate that the questions of whether or when the backpay liability ceased, and whether substantially equivalent employment to which the discriminatees are entitled exists, be left for the compliance stage of this proceeding.

[19] See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

ORDER[20]

The Respondent, Pine Valley Meats, Inc., Norwalk, Wisconsin, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Threatening employees with arrest for engaging in union activities in the plant during off-duty hours.

(b) Promising or granting wage increases and other benefits in order to discourage employees from supporting the Union. Nothing in this Order, however, shall be construed to require Respondent to revoke any wage increases or other benefits previously granted.

(c) Threatening employees with the loss of wage increases or other benefits if they select the Union as their collective-bargaining representative and in order to discourage them from making such a selection.

(d) Discriminatorily discharging or refusing to rehire employees because of their union activity, membership, or support.

(e) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action designed to effectuate the policies of the Act:

(a) Offer Steven Bautch and Dale Wolfe immediate and full reinstatement to their former jobs or, if that is not possible, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges, and make them whole for any loss of earnings that they may have suffered by reason of the discrimination against them in the manner set forth in the section of this Decision entitled "The Remedy."

(b) Preserve and, upon request, make available to the Board or its agents, for examination or copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other documents necessary and relevant to analyze and compute the amount of backpay due under this Order.

(c) Post at its Norwalk, Wisconsin, facility copies of the attached notice marked "Appendix."[21] Copies of said notices, on forms to be provided by the Regional Director for Region 30, after being duly signed by Respondent's authorized representatives, shall be posted by it immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

IT IS FURTHER RECOMMENDED that the complaint be dismissed in all other respects.

IT IS FURTHER RECOMMENDED that Case 30-RC-3659 be remanded to the Regional Director, that the election conducted on December 21, 1979, be set aside and that the Regional Director conduct a rerun election at such time as he deems the circumstances permit a free choice on the issue of representation.

[20] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

[21] As noted in regard to the notice of second election, it is appropriate that the notice herein be posted in both English and Polish. In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."